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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia

Addendum

This update, covering the period December 2000-early March 2001, is submitted as an addendum to the main report of the Special Rapporteur (E/CN.4/2001/47), prepared in December 2000.

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I. BOSNIA AND HERZEGOVINA

1. The months following the November 2000 elections in Bosnia and Herzegovina have been dominated by political crisis and stalemate. It was only on 22 February 2001 - more than three months after the elections - that the Council of Ministers was formed, and other key structures have been similarly delayed. The delays have been detrimental to the people of Bosnia and Herzegovina, especially as the country is faced with competition from neighbouring countries for aid and investment. The Special Rapporteur hopes that the new Government - the first formed without the three main nationalist parties since the conflicts began - will make the protection of human rights one of its top priorities.

2. One of the country's principal challenges, as frequently observed by the Special Rapporteur, is endemic and institutionalized discrimination. It may be recalled that the Constitutional Court in 2000 issued an important decision stating that some of the provisions of the entity constitutions (especially in the Republika Srpska) were incompatible with the federal Constitution. Despite this decision, little has been done to implement its requirements. On 11 January, the High Representative issued a decision to establish constitutional commissions in both entities, with the ultimate aim of abolishing discrimination and protecting the rights and interests of all peoples in the country. The decision imposes an interim arrangement until the Constitutional Court's ruling is fully implemented.

A. Returns

3. The results of the re-registration of displaced persons became available in late 2000, after preparation of the Special Rapporteur's main report. They indicate that the number of displaced persons has decreased significantly when compared with previous years. In 1996 there were approximately 845,000 displaced persons in Bosnia and Herzegovina, while at the end of 2000, a total of 518,252 persons registered for displaced person status. This indicates that progress has taken place on returns. During 2000, more than 52,000 displaced persons and 16,000 refugees, most of them members of minorities, were able to return to their homes. Nevertheless, more than half a million people are still displaced within the country, five years after the Dayton Agreement. Finding adequate solutions to the continuing plight of these people - and ensuring respect of their fundamental human rights - remains a major challenge for Bosnia and Herzegovina and the international community. The Special Rapporteur would like to stress the importance of finding regional solutions to return questions, as the obstacles to return in many cases cut across international boundaries.

B. Migration

4. One issue to have emerged recently in the region is that of irregular migration and related human rights concerns. The rising number of irregular migrants in the Balkans has been gaining increased attention and Bosnia and Herzegovina appears to be one of the main trafficking and smuggling routes to Western Europe. According to official statistics, the number of irregular migrants apprehended is steadily increasing: some 28,000 migrants, mostly from Asia and the Middle East, entered Bosnia and Herzegovina in 2000, while only 5,000 left the country legally.

The lack of visa requirements for certain countries, compounded by extremely porous borders, has encouraged and allowed a large influx of migrants through Bosnia and Herzegovina. Moreover, the newly created State Border Police lack equipment and funding; as a result, borders are partly patrolled by cantonal or entity police who have neither the capacity nor specific competence for such a task.

5. There is also a legal vacuum with respect to migration and asylum issues, despite the State Law on Immigration and Asylum, adopted in December 1999. This law represented an important step forward in implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It established a legal framework for the admission and stay of aliens, as well as criteria and procedures for determining refugee status and the granting of asylum. However, implementation has been extremely limited, as the necessary by-laws, regulations and instructions at the State and entity levels still need to be elaborated and adopted.

6. Of particular concern is the fact that irregular migrants are forced to take increasing risks to travel westward. More than 30 migrants have drowned in the past year alone in the Sava river separating Croatia from Bosnia and Herzegovina. It is vital that future asylum and migration policies ensure respect for the human rights of asylum-seekers and migrants, whilst increasing pressure on traffickers and smugglers.

7. The Special Rapporteur would like to emphasize the need for regional cooperation in finding solutions that respect the rights of refugees and migrants. Re-admission agreements between countries are not the automatic solution to this problem as often perceived, but merely shift the burden to countries less able to deal with the issue. Indeed, there have been allegations and even reported cases of irregular migrants being deported from Croatia to Bosnia and Herzegovina without verification that they had previously transited through Bosnia and Herzegovina. There are also concerns that summary deportations may end in violations of the requirement to offer protection to refugees in need of asylum and respect for the principle of non-refoulement.

II. REPUBLIC OF CROATIA

8. The Special Rapporteur undertook his sixth mission to the Republic of Croatia from 26 February to1 March 2001. In Zagreb, he met with the President of the Republic, senior government officials, representatives of international organizations, academics, members of Parliament, Croatian journalists and others.

9. In his meetings and statements, the Special Rapporteur commended the efforts and achievements of the Government in the past year. There have been many positive developments, including the removal of legislative and administrative impediments to return. However, problems persist because of discrepancies between the intentions of the Government and implementation at the local level. The Special Rapporteur expressed the hope that the situation in Croatia will improve after the forthcoming local elections.

10. The Special Rapporteur also spoke of the necessity of a regional approach to human rights issues. The questions of return, internally displaced persons, property rights, war crimes, human trafficking and other questions cannot be resolved exclusively at the level of any country and have to be addressed at the level of the region as a whole. Moreover, the level of international assistance from abroad will depend on the degree of regional cooperation achieved. Croatia must show itself to be a contributor to stability in south-east Europe.

A. Returns and the right to property

11. During his mission, the Special Rapporteur expressed concern over some of the serious problems that continue, especially regarding discrimination in property restitution and the provision of alternative housing. Large numbers of refugees and displaced persons are still not returning because property rights are not being adequately addressed. According to the Government, some 3,000 property cases have been solved of a total of some 16,000 (all relating to private property that was, or continues to be, occupied). Of the remaining 13,000 cases, the Government claims that only 20 per cent relate to illegal or multiple occupancies. In this regard, the Special Rapporteur stresses again that respect for property rights is absolutely essential. If property rights are truly respected, then the problems of return and solutions to the questions of refugees and internally displaced persons will be much easier to achieve than they have been until now.

12. Returnees who previously had tenancy rights are in the worst possible situation because their cases have not been resolved at all. The problem concerns mostly urban Serbs, tenancy right holders, who have no other solution. The most important problem in the Knin area is the large caseload of unresolved requests for the return of property. In the meantime, the greatest obstacle to returns of both Croats and Serbs in the Danube region is the impossibility of finding any employment, as the economy remains devastated.

13. The Special Rapporteur notes with concern that cases of illegal occupancy are still not effectively addressed, even in Zagreb, and court ordered evictions are not implemented. The Government should fulfil its obligation of ensuring the rights of all persons to the restitution of their property without preconditions. Temporary or illegal occupants, regardless of their status, should be evicted immediately once the property owner prevails on a claim for restitution. On 24 January, the Office of the High Commissioner for Human Rights in Croatia monitored an attempt at a court ordered eviction in Zagreb of a displaced family from Vukovar, which culminated in the court order not being implemented and the original owner - after eight years of legal proceedings - being denied access to her own home. Cases such as these are commonplace throughout Croatia.

14. The Government should demonstrate its commitment to property rights by evicting illegal occupants. One year ago, OHCHR in Croatia submitted to the Government a list of 15 "easy" cases, requesting immediate annulment of the right of temporary occupants in Korenica, of which the Government claims to have resolved only 5. The 15 temporary occupants were neither refugees nor internally displaced persons but ethnic Croats from Croatia - including some government officials - who were encouraged by the previous regime to use the properties mainly for business purposes.

B. War crimes prosecutions

15. War crimes prosecutions of ethnic Serbs are continuing, and the Special Rapporteur expresses concern, once again, over the fairness of these trials. According to international observers in Zagreb, 28 persons of Serb nationality - most of whom are returnees - were detained on war crimes charges in Croatia between December 2000 and March 2001. The Special Rapporteur calls for all war crimes to be investigated in accordance with international standards and for war crimes perpetrators of any ethnicity to be brought to justice. War crimes investigations and trials should be conducted in such a way as to reassure the Serb population that they are based on due process, not victor's justice.

C. Discrimination and nationalism

16. The Special Rapporteur condemns in the strongest terms the rise of nationalism and right-wing extremism in Croatia, as shown in recent mass demonstrations in Split and elsewhere in support of Mirko Norac, a former Croatian Army General charged with war crimes committed in the Gospic area. Such demonstrations will pose a great danger if allowed to go unchallenged. Extremism has also been evident in hate-based articles in *Slobodna Dalmacija*, a Split-based government-owned newspaper. The Special Rapporteur calls on the media in Croatia to refrain from promoting discrimination, intolerance and hatred and to take measures to promote reconciliation.

17. The Special Rapporteur condemns recent attacks on journalists in Croatia and calls for a thorough investigation into the assault on 1 March of two reporters for the weekly *Feral Tribune* near Zadar and prosecution of those responsible for the attack. He has also called on the authorities to take all necessary measures to ensure the safety of Mr. Srdj Jaksic, a prominent human rights lawyer who was shot and wounded on 30 December 2000 at his home in Dubrovnik by unidentified assailants.

18. Regarding the census due to take place from 1-15 April 2001 - the first in independent Croatia - the Special Rapporteur calls on the Government to enable all of its citizens who are currently refugees in the Federal Republic of Yugoslavia and Bosnia and Herzegovina to be allowed to participate by receiving census questionnaires through Croatia's diplomatic missions in those countries. Regarding crucial local elections in May, the Special Rapporteur calls for all necessary measures to be taken to permit as wide a participation as possible.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

19. The Special Rapporteur visited the Federal Republic of Yugoslavia from 7 to 18 March 2001, travelling to Serbia (including the Presevo Valley), Kosovo and Montenegro.

20. The dramatic political changes in Serbia launched with the ousting of Slobodan Milosevic in October 2000 continued into 2001. Elections for the Republic of Serbia Parliament on 23 December 2000 led to an overwhelming victory for the Democratic Opposition of Serbia (DOS) and removed Milosevic loyalists from control over the last levers of government in the Federal Republic of Yugoslavia. In February 2001, DOS formed a government in Serbia. In Montenegro, momentum towards independence was slowed by

opposition from the international community and the unwillingness of the federal Government to negotiate a new federal relationship. Nevertheless, the Montenegrin authorities have scheduled elections to form a new government for 22 April, with a referendum on independence to follow shortly thereafter. In Kosovo, United Nations Administration in Kosovo (UNMIK) began the year under a new administration when Mr. Hans Haekkerup replaced Dr. Bernard Kouchner as the Special Representative of the Secretary-General.

21. The year also opened on a familiar and disturbing note, however, as an ethnic-Albanian insurgency in southern Serbia threatened to undermine the fragile stability in the Balkans, spilling over into the former Yugoslav Republic of Macedonia in late February. The new Serbian authorities struggled to gain control over the civil administration and security forces and begin addressing the country's daunting economic and social challenges. Ethnic violence continued to wrack Kosovo and its United Nations administered judiciary remained deeply troubled.

A. Serbia (excluding Kosovo)

22. The Special Rapporteur remains deeply concerned about the continuing violence in the Presevo Valley region of southern Serbia. Tensions have remained high as units of the ethnic Albanian Liberation Army of Presevo, Medvedja and Bujanovic (UCPMB) have continued to engage the Federal Republic of Yugoslavia security forces in firefights in and near the Ground Safety Zone (GSZ) along the border with Kosovo. Approximately 40 deaths have now been attributed to the violence in the area since the UCPMB became active in early 2000, including the deaths in early March 2001 of three Federal Republic of Yugoslavia soldiers killed by a landmine near the GSZ. The Federal Republic of Yugoslavia and Serbian authorities have continued to act with restraint, seeking NATO, United Nations and international community assistance for a negotiated settlement to the violence. The authorities have prepared a detailed plan for addressing the structural discrimination affecting the Albanian majority in the Presevo Valley, and Albanian leaders in the region have developed their own proposal for discussion.

23. NATO and UNMIK have finally begun to take measures to contain the violence from the Kosovo side of the boundary, agreeing with the Federal Republic of Yugoslavia authorities gradually to reduce the buffer zone between Serbia and Kosovo and to allow the Federal Republic of Yugoslavia security forces to re-occupy sections of the area. The conflict spilled over into the former Yugoslav Republic of Macedonia in February as another ethnic Albanian armed group triggered violence along the former Yugoslav Republic of Macedonia-Kosovo border. After months of hesitation, NATO finally took significant steps against the Albanian guerrillas, moving militarily against a staging area near the village of Tanusevci on the border. The European Union and the Organization for Security and Co-operation in Europe (OSCE) have indicated a willingness to support efforts by the Federal Republic of Yugoslavia to resolve the crisis through negotiations, but actual contributions - such as the deployment of 30 observers - have been slow to materialize. United Nations agencies in Belgrade, including the Office of the High Commissioner for Human Rights, have conducted an assessment of the situation in southern Serbia and are preparing an assistance strategy.

24. The Special Rapporteur welcomes the recent ceasefire agreement and urges all parties to continue to pursue a negotiated, non-violent solution to the conflict in southern Serbia and along the border with the former Yugoslav Republic of Macedonia. He reminds the parties of the horrors unleashed by ethnic conflict in the Balkans in the past decade and calls upon NATO and the International Security Force in Kosovo (KFOR) to cooperate fully against the ethnic Albanian armed groups, particularly in Kosovo where the uneasy KFOR and UNMIK truce with the remnants of the Kosovo Liberation Army (KLA) has done little to contain guerrilla activity in the area. He urges the international community to respond much more vigorously with assistance for the region in order to avoid a wider conflict. Finally, he recommends to all parties that solutions be found within a human rights framework, focusing on removing the human rights problems at the root of the conflict and replacing discriminatory structures with institutions built on democratic, participatory and equitable principles.

25. The new Serbian Government's commitment to reform and to addressing the legacy of the Milosevic era were called into question when Prime Minister Zoran Djindjic appointed several officials from the Milosevic regime to high police posts, including the former police chiefs of Kosovo and Vojvodina, all of whom have close links to Mr. Jovica Stanisic, the former police chief and aide to Milosevic prior to the Kosovo conflict. In addition, General Sreten Lukic, chief of police in Kosovo when the police were accused of grave violations, was appointed commander of the civil police. These appointments followed a public disagreement between President Kostunica of the Federal Republic of Yugoslavia and Ms. Carla del Ponte, chief prosecutor at the International Criminal Tribunal for the Former Yugoslavia (ICTY), over the extradition of Milosevic to The Hague to stand trial for war crimes. While dismayed at the police appointments, the Special Rapporteur is encouraged by recent steps taken by the Serbian authorities to begin investigations of human rights crimes committed during the Milosevic era, including the arrest of Mr. Rade Markovic, former head of State Security (the secret police) and the new willingness expressed by President Kostunica and the DOS leadership to cooperate with ICTY.

26. The Special Rapporteur remains concerned at the slowness with which the new Federal Republic of Yugoslavia and Serbian authorities are moving to release political prisoners remaining from the Milosevic era, particularly the approximately 500 Kosovar Albanian detainees convicted in unfair trials for events related to the Kosovo conflict. The Federal Republic of Yugoslavia Parliament finally adopted an amnesty act on 26 February affecting approximately 28,000 Serbs charged with crimes related to evasion of military service and 100 to 200 of the Albanian prisoners. While this amnesty is a welcome step, the Special Rapporteur urges the Federal Republic of Yugoslavia and Serbian authorities to take immediate steps for the release of the remaining Albanian political prisoners through presidential pardon or legal review.

B. Kosovo

27. Ethnic violence in Kosovo - organized Albanian attacks on Serbs and other minorities - has intensified to an alarming degree during this short reporting period. On 12 February, for instance, approximately 400 Kosovo Albanian males damaged houses in an uninhabited Kosovo Serb hamlet in Pristina before being dispersed by KFOR. On 17 February, a bomb destroyed a bus in a KFOR-escorted convoy of Serb civilians travelling from Serbia to Serb enclaves in

northern Kosovo, killing at least 10 persons and injuring some 35 others. The incident followed a 13 February machine-gun attack on another bus carrying Serb civilians on the Urosevac/Strpce road in which one man died and three others were wounded. Six Serb males were injured in separate incidents in which the tractors on which they were riding hit anti-tank mines planted on roads near their villages. These attacks are the most recent incidents in an increasingly sophisticated, organized and deadly campaign against Serb and other minority populations in Kosovo that has been continuing since the end of the war. The divided city of Mitrovica continues to be a flashpoint for ethnic violence against both Serbs and Albanians. In late January, Serbs targeted Albanians in the Serb-dominated northern section of the city and a fight took place between mobs of Albanians and Serbs in the security zone dividing the city.

28. The Special Rapporteur again calls for an urgent review of security procedures for minorities in Kosovo and a much more aggressive approach from KFOR and UNMIK against the organized groups fuelling the violence. Kosovo Albanian leaders and citizens must end their silence on the violence that threatens continued international support for Kosovo and the gains Kosovo has achieved in its move toward political autonomy under Security Council resolution 1244 (1999).

29. One reason the violence persists unchecked is the continuing struggle UNMIK is having to establish the rule of law. The judiciary remains plagued by poorly trained judges - often biased or subject to intimidation - and ineffectual administration. For example, the judiciary has still not been able to redress the unfairness of trials of Serbs charged with war crimes. On 18 January 2001, an Albanian judge-dominated court convicted Mr. Miroslav Vuckovic for genocide - the first such conviction in Europe since 1945 - on evidence inconsistent with the verdict and in a trial marred by problems of due process. Mr. Momcilo Trajkovic, initially charged with war crimes, was convicted of crimes against humanity by another Albanian-dominated panel, even though the trial was procedurally deficient and the conviction based on circumstantial evidence. In the face of clear bias on the part of Albanian judges and prosecutors and intense pressure from United Nations and international human rights organs, UNMIK finally adopted a regulation authorizing panels of majority-international judges and an international prosecutor in cases involving minorities. Unfortunately, however, the regulation has been applied arbitrarily and its application has been inexplicably denied in a number of controversial cases, for example, those against Mr. Afrim Xheladini, Mr. Radovan Apostolovic and Mr. Zoran Stanovic.

30. Longstanding efforts to bring judicial norms in Kosovo into conformity with international human rights standards have still not borne fruit. Serious problems remain with long pre-trial detention periods and the lack of a habeas corpus right - the mechanism for challenging the legality of detention. UNMIK and KFOR still resort to extrajudicial "holds" to keep suspects in jail after legal detention orders have expired.

C. Republic of Montenegro

31. In February 2001, the Montenegrin legislature adopted a new Referendum Law, amendments to the Election Law and rules for election campaign coverage by State-run media. The Special Rapporteur welcomes the timely creation of a legal framework for early parliamentary elections, scheduled for 22 April, as well as for a possible subsequent referendum.

At the same time, the Special Rapporteur expresses concern at the politicizing of public discussion on basic human rights issues, such as provisions on the right to vote and the applicable majority in the Referendum Law. The debate has resulted in the polarization of public opinion along political lines instead of focusing on the compliance of the drafted norms with international standards. In addition, two parties with representation in Parliament did not participate in the vote on the Referendum Law, a development that might jeopardize the procedure for exercising the right to a fair and free election.

32. The Special Rapporteur welcomes the efforts of the authorities in Montenegro to address the problem of trafficking. However, he is concerned that there is still no adequate overall government policy to combat trafficking or to provide republic-wide protection for trafficking victims. The response of the judiciary to the relatively new phenomenon of trafficking is still inadequate. On 18 December 2000, for instance, the High Court in Podgorica concluded a trial against 16 individuals arrested in July and charged with trafficking in women and prostitution. The trial lasted only three weeks and the judge dropped the charges because of lack of evidence. The prosecution appeared not to have made a serious effort to use fully the available material evidence.

33. The Special Rapporteur welcomes the establishment in February 2001 of the Human Rights Centre at the University of Montenegro. He calls upon the Montenegrin authorities to move ahead on legislative, administrative and judicial reforms to meet international human rights standards and to ensure that the forthcoming, critical elections and referendum are conducted in a fair and free environment.